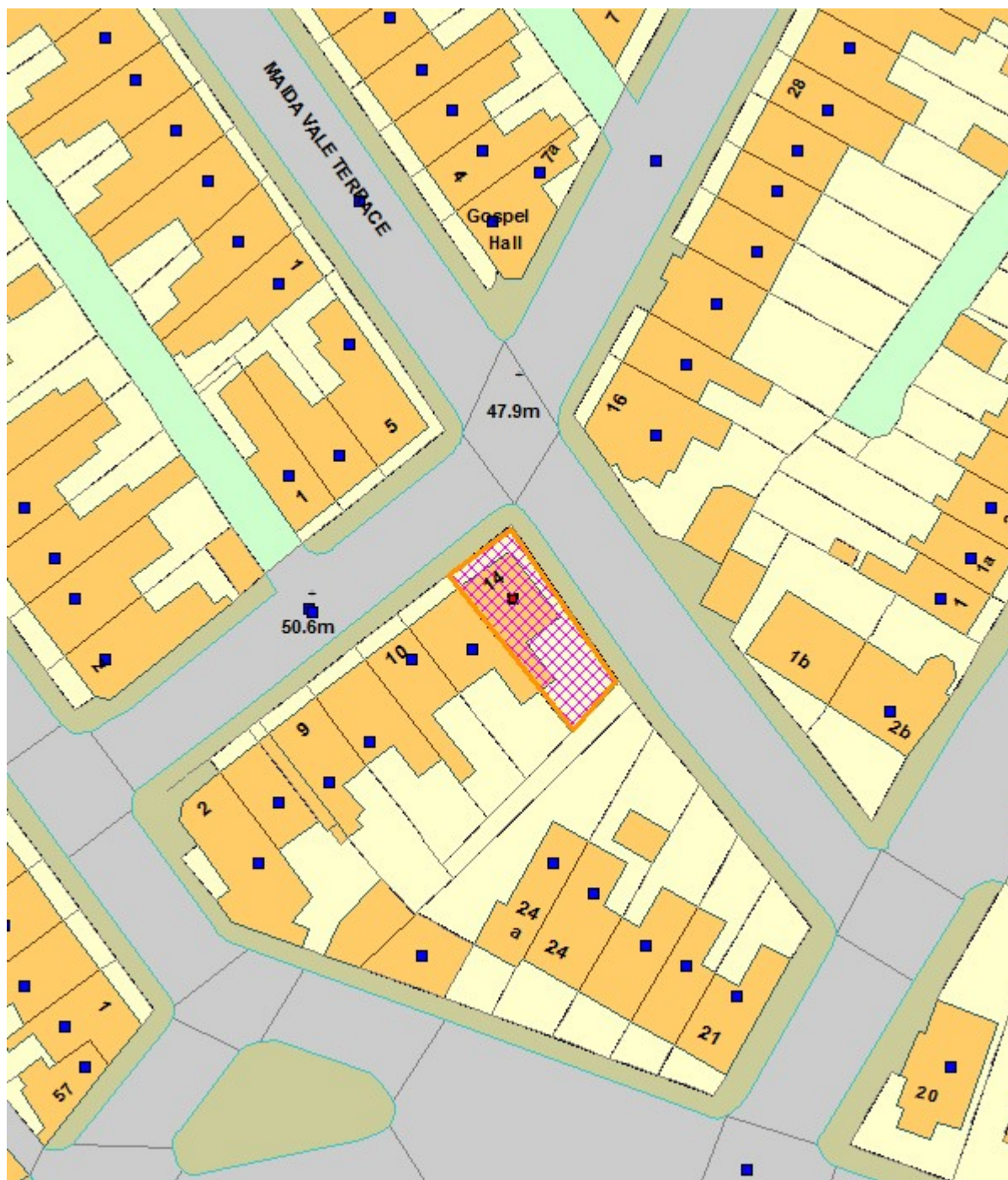


# PLANNING APPLICATION OFFICERS REPORT



<b>Application Number</b>	19/01457/S73	<b>Item</b>	01
<b>Date Valid</b>	19.09.2019	<b>Ward</b>	EFFORD AND LIPSON
<b>Site Address</b>	14 West Hill Road Plymouth PL4 7LE		
<b>Proposal</b>	Variation of condition 1 of application 18/00521/FUL to allow amended design (Part Retrospective)		
<b>Applicant</b>	Mr Ben Elliott		
<b>Application Type</b>	Removal or variation of a condition		
<b>Target Date</b>	14.11.2019	<b>Committee Date</b>	12.03.2020
<b>Extended Target Date</b>	13.03.2020		
<b>Decision Category</b>	Councillor Referral		
<b>Case Officer</b>	Miss Josephine Maddick		
<b>Recommendation</b>	Grant Conditionally		



Following feedback from members during planning committee, which was held on Thursday 16th January 2020, changes have been negotiated with the applicant, which include:

- Secondary gate removed
- New rendered blockwork wall reinstated to make boundary wall as original
- Annex wall straightened to approve appearance
- Tenement roof reinstated creating small enclosed cupboard space

New proposed dimensions under 19/01272/S73 following planning committee:

The proposed internal space measures approximately 32 sq. metres.

The proposed external perimeter measures approximately 40 sq. metres

The roof is part pitched with part flat roof with a surface area of approximately 18 sq. metres.

The northeast elevation, the length measures approximately 5.8m

The southeast elevation the length measures approximately 6.6m

The southwest elevation the length measures approximately 5.8m  
The northwest elevation the length measures approximately 7.2m  
Height to eaves: 2.55m  
Height to flat roof to ground floor level: 3.3m

Officers acknowledge that changes to the south west elevation and party wall are welcomed by the adjoining neighbour. The changes present a cleaner and more legible line of demarcation between the two properties, which is a visual improvement for the occupiers of properties to the west of the site. The conditions which were conceived from the previous officer assessment, which was presented at planning committee are still relevant and are being retained following the proposed changes. However, one condition has been removed which referenced temporary use of a second gate which has since been omitted from the plans and consequently the condition is redundant. Officers conclude that the proposal is acceptable and recommend approval.

For clarity, the report below remains the same as that presented to Planning Committee on Thursday 16th January 2020.

### **1. Description of Site**

14 West Hill Road is a two-storey end terrace dwelling located within the Efford and Lipson neighbourhood. The site is a plot set at street level adjacent to Maida Vale Terrace.

### **2. Proposal Description**

Variation of condition 1 (Approved Plans) 18/00521/FUL to allow amended design.

Original approved dimensions

Erection of a single storey rear annex 18/00521/FUL

The proposed internal space measures approximately 28.9 sq. metres.  
The proposed external perimeter measures approximately 36 sq. metres  
The roof is part pitched with part flat roof with a surface area of approximately 14.3 sq. metres.  
The northeast elevation, the length measures approximately 4.88m  
The southeast elevation the length measures approximately 6.82m  
The southwest elevation the length measures approximately 5.46m  
The northwest elevation the length measures approximately 7.14m  
Height to eaves: 2.55m  
Height to flat roof to ground floor level: 3.6m

New dimensions under 19/01272/S73:

The proposed internal space measures approximately 31 sq. metres.  
The proposed external perimeter measures approximately 40 sq. metres  
The roof is part pitched with part flat roof with a surface area of approximately 18.9 sq. metres.  
The northeast elevation, the length measures approximately 5.4m  
The southeast elevation the length measures approximately 7.1m  
The southwest elevation the length measures approximately 5.46m  
The northwest elevation the length measures approximately 7.59m  
Height to eaves: 2.55m  
Height to flat roof to ground floor level: 3.64m

The proposed materials include roof tiles to match existing roof of the dwelling house and render to match existing house.

### **3. Pre-application Enquiry**

None.

### **4. Relevant Planning History**

19/00212/ENF Enforcement Case – Not built in accordance with plans

19/00041/ENF Enforcement Case - Alleged unauthorised dumping of building waste

18/00521/FUL - Erection of a single storey rear annex – grant conditionally

### **5. Consultation Responses**

None requested.

### **6. Representations**

7 Objections received

Overdevelopment

Lack of parking

Air B&B use

Lack of space for bins

Open enforcement case, plans not being followed

Removal of boundary wall

Harm to overall amenity of the area due to increase in C4 use

### **7. Relevant Policy Framework**

Section 70 of the 1990 Town and Country Planning Act requires that regard be had to the development plan, any local finance and any other material considerations. Section 38(6) of the 2004 Planning and Compensation Act requires that applications are to be determined in accordance with the development plan unless material considerations indicate otherwise. For the purposes of decision making, as of March 26th 2019, the Plymouth & South West Devon Joint Local Plan 2014 - 2034 is now part of the development plan for Plymouth City Council, South Hams District Council and West Devon Borough Council (other than parts South Hams and West Devon within Dartmoor National Park).

On 26 March 2019 of the Plymouth & South West Devon Joint Local Plan was adopted by all three of the component authorities. Following adoption, the three authorities jointly notified the Ministry of Housing, Communities and Local Government of their choice to monitor at the whole plan level. This is for the purposes of the Housing Delivery Test and the 5 Year Housing Land Supply assessment. A letter from MHCLG to the Authorities was received on 13 May 2019. This confirmed the Plymouth, South Hams and West Devon's revised joint Housing Delivery Test Measurement as 163% and that the consequences are "None". It confirmed that the revised HDT measurement will take effect upon receipt of the letter, as will any consequences that will apply as a result of the measurement. It also confirmed that that the letter supersedes the HDT measurements for each of the 3 local authority areas (Plymouth City, South Hams District and West Devon Borough) which Government published on 19 February 2019.

Therefore a 5% buffer is applied for the purposes of calculating a 5 year land supply at a whole plan level. When applying the 5% buffer, the combined authorities can demonstrate a 5-year land supply of 6.4 years at end March 2019 (the 2019 Monitoring Point). This is set out in the Plymouth, South Hams & West Devon Local Planning Authorities' Housing Position Statement 2019 (published 26 July 2019). The methodology and five year land supply calculations in the Housing Position Statement are based on the relevant changes in the revised National Planning Policy Framework published 19 February 2019 and updates to National Planning Practice Guidance published by the Government in September 2018, subsequently amended by NPPG Housing Supply and Delivery published 22 July 2019.

Other material considerations include the policies of the National Planning Policy Framework (NPPF), National Design Guide and guidance in Planning Practice Guidance (PPG). Additionally, the following planning documents are also material considerations in the determination of the application:

- Development Guidelines: Supplementary Planning Document: First Review (2013)
- Plymouth and South West Devon Supplementary Planning Document (SPD). (Currently under consultation)

## **8. Analysis**

1. This application turns upon the adopted Joint Local Plan and its policies DEV1 (Protecting health and amenity), DEV20 (Place shaping and the quality of the built environment) and DEV10 (Delivering high quality housing), the Framework and other material policy documents as set out in Section 7.

2. Officers note the Plymouth and South West Devon SPD has completed its consultation phase but can carry limited weight prior to its formal adoption. Guidance is set out in the draft of the Plymouth and South West Devon SPD that expands on JLP policy DEV10.4 by setting out criteria for residential annexes, though officers have been unable to consider the policy as the annexe already has permission under planning consent 18/00521/FUL and the policy is not yet adopted.

3. This application seeks retrospective consent by way of variation of condition for a larger annexe building to what was approved. The original consent was issued on 26th June 2018 for erection of a single storey annexe. The development started on site and the Local Planning Authority received a report that the development was not being built in accordance with the plans. As a result planning enforcement officers conducted a site visit on the 27th June 2019 and made contact with the owner regarding the breach of planning control. Officers invited a section 73 application so that the material changes can be properly considered, as well as providing an opportunity for public consultation.

### Party Wall

4. Officers note that objections have been raised regarding encroachment and party wall concerns between 12 and 14 West Hill Road. Officers deem this not to be a material planning consideration as it is a civil matter between both parties. The position of the built annexe has been considered in conjunction with the site location plan and position of the red line. Officers consider that the annexe currently in situ is within the red line, as the red outline is quite thickly marked on the site location plan and consequently allows for interpretation in terms of its exact location within the red line. As a result, officers have been able to continue determination of this s73 application rather than ensue non-determination and the applicant proceeding to appeal on grounds of non-determination.

### Design/Impact on Streetscene

5. 14 West Hill Road is an end terrace property and has a large side elevation fronting onto Maida Vale Terrace. The annexe building which was approved under 18/00521/FUL measures 36 sq metres when measured externally, the annexe which has been built measures 41 sq. metres and proposal subject to this application measures 40 sq. metres. The increase in size externally is due to a wider external wall on the southwest elevation. Under the original consent, the north east elevation measured 4.88 metres in length and the previous officer report described the annexe as being tucked into the rear curtilage. Under the new application, the annexe appears more prominent on the street scene as the north-east elevation of the annexe is wider than what was approved. It now measures 5.4 metres due to it being extended by 52cms.

6. However, on balance, the changes to the design are not considered significant and officers consider the proposal complies with Policy DEV20 of the JLP.

7. The street scene is fragmented already with some rear elevations, side elevations and front elevations fronting onto Maida Vale Terrace. Its topography means that the rear of properties on Queens Road are quite exposed as they sit at a higher level and consequently, the rudimentary retaining walls and hardstandings belonging to 24 and 24a Queens Road impair the street scene somewhat. The development at 14 West Hill Road should enhance the street scene and not degrade it further, especially given its adjacent position next to the rear of 24a Queens Road. The Joint Local Plan highlights this point in policy DEV20 whereby new development should rectify and repair damaged environments, and paragraph 130 of the NPPF advises that permission should be refused for development that fails to improve the quality of an area. Officers consider the proposed increase in size, which is subject to this s73 application does not constitute damage to the amenity of the area.

8. The increase in size of the annexe has a cumulative impact on the property and should further development of the site take place it is likely to damage the amenity of the area especially given its sensitive location has an end terrace house. Officers deem it necessary to remove permitted development rights due to the enlargement of the annexe as there would be concern that further development would constitute overdevelopment of the site.

#### Use of the property

9. The property is currently being used as a self-contained holiday let (Class c3). Officers have carried out an internal inspection and note the property is laid out with a kitchen, double bedroom and bathroom on ground floor. It has three double bedrooms on the first floor with two en suite bathrooms. The court yard has been split into two with a solid wooden close boarded fence, the fence provides separate outdoor space and access to the rear of the house and separate access to the annexe. The dividing fence has not been included on the drawings as part of this application as the applicant confirmed the fence is in place to stop guests going near the annexe whilst it is under construction and being exposed to a building site. Under permitted development, the courtyard fence could stay in situ and as it is permitted development, however officers consider the fence to demonstrate clear separation between the house and the annexe in that both units could be used independently with separate access points and they would effectively function as two separate units. Officers note the applicant has shown two entrances on the north-east elevation and therefore, it is probable that the separate access to the annexe will be retained. The creation of an independent access conflicts with guidance set out in paragraph 2.2.87 of the adopted SPD and officers have addressed the matter with the applicant's agent who confirmed the two gates are not entirely necessary although would prefer to keep them in situ at this point. A condition has been added to this consent asserting the removal of one gate once the annexe is occupied and for the applicant submit evidence to the Local Planning Authority for written approval that the condition has been complied with. This is to ensure there is only one gate into the courtyard area from Maida Vale Terrace.

10. Officers have discussed the use of the annexe with the applicant and it was confirmed in an email dated 28th Oct 2019 the annexe once complete will be used ancillary to the main dwelling to accommodate larger families. Officers consider that on a practical level the setup is unlikely to work for larger groups, because when families or groups holiday together it is normally centred around shared amenity space. At 14 West Hill Road there are two separate amenity spaces; the kitchen/dinner within the house and the lounge/kitchen within the annexe. On balance, should the owner of the property be unable to let the dwelling to larger families or groups which would include the annexe, there might be a temptation to let the annexe out as a single unit separate to the house. Occupiers of the annexe would not need to access the house, as the annexe is self-contained with its own bathroom, bedroom and kitchen living space. Officers are concerned that there is potential for unlawful C4 use. Notwithstanding this, the annex already has planning permission and should a

breach of planning control take place in terms of unauthorised C4 use the local planning authority will investigate accordingly and escalate enforcement action where appropriate.

11. Officers acknowledge that an annexe has already been approved on the site. The previous officer report under planning reference 18/00521/FUL raised concern about potential self-contained occupation and consequently added a condition in reference to a previous appeal outcome on a different site (APP/N1160/D/17/3175288).

12. Officers note that the policy context has been clarified since the time of the original submission and Policy DEV10 of the JLP explicitly stipulates annexes should be ancillary to the principal dwelling via a functional link, with no separate demarcation or boundary. However, the application currently being assessed is a s73 variation of condition and officers are unable to revisit the principle of the annex itself. Furthermore whilst the use of the property as a holiday let may make monitoring of the property more difficult from an enforcement perspective, at present the unit would remain a C3 dwelling and no change of use is considered to have occurred.

13. Officers note that objections from residents raise concern regarding over development of the site. However given the proposal is comparable to the original application in that the proposal is only four square metres bigger than what was given consent officers do not deem the increase in size to be significantly harmful. The ancillary use condition will remain in place.

#### Amenity

14. An annexe building has already been approved at 14 West Hill Road and officers consider the new proposal to not be significantly different in size and shape to that, which was given consent originally.

15. The proposed annexe is an unusual quadrilateral shape and sits on the boundary between 12 and 14 West Hill Road. During construction of the annexe the existing boundary wall between 12 West Hill Road and 14 West Hill Road was removed. This point has been raised within letters of representation, however officers deem the removal or potential construction of a new garden wall within the curtilage of 12 West Hill Road is a civil matter. The original approved plans indicated the annexe would be constructed on the boundary.

16. Other amenity issues have been raised through a letter of representation (LOR) in regards to parking. The increase in size of the property and increased bed space could mean holidaymakers arrive in multiple vehicles to use the accommodation. The resident explains within the LOR that parking is already an issue along West Hill Road and Maida Vale Terrace and the annexe will exacerbate the issue. Officers recognise that parking is at a premium but an annexe has already been given planning consent on the site. Officers note the annexe user would be more likely to share transport needs with the main household if the site was not used as holiday accommodation, however as noted above a change of use has not occurred.

17. Since August 2015 national planning policy requires consideration to be given as to whether intentional unauthorised development has been carried out. The new policy applies to all relevant planning decisions made by Local Planning Authorities and Planning Inspectors. The policy has been introduced largely as a result of Government concerns about the harm caused by unauthorised developments in the Greenbelt, but applies equally elsewhere. The policy does not indicate exactly how much weight should be afforded to this in relation to the weight to be given to other material planning considerations. Neither does the policy clarify exactly what evidence is required to demonstrate the unauthorised development has been carried out intentionally.

18. It is clearly highly undesirable for any development to take place before planning permission has been properly sought, and obtained, in any circumstances. However, it should be noted that this

new policy only applies where unauthorised development has taken place with the full knowledge of the person(s) undertaking the work that it lacks the necessary consent. In reality, given the difficulties in interpreting these points, it is considered that little or no weight can be given to this aspect, unless the Council has clearly indicated to the applicant that unauthorised development is being carried out, and that works have then continued beyond that point, or where there is some other compelling evidence that such work has intentionally been carried out.

19. Neither of these factors appear to apply in this case, and so it is considered that no weight should be afforded to this particular point in the determination of this application.

20. Officers have considered this application in detail and negotiated with the applicant to secure improvements, which has included: reducing the size of the annexe from 41sq metres to 40 sq. metres; reinstating a pitch to the roof; and reinstating the part demolished rear tenement of 14 West Hill Road.

### **9. Human Rights**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

### **10. Local Finance Considerations**

N/A

### **11. Planning Obligations**

Planning obligations not required due to the nature and size of proposal.

### **12. Equalities and Diversities**

Officers note that there is an equality and diversity issue for the resident of 12 West Hill Road, in terms of access into the rear service lane and ongoing party wall matters with the owner of 14 West Hill Road. Officers deem the issue to be a civil matter between both parties. The annexe itself in terms of usability or function does not cause concern.

This planning application has had due regard to Section 149 of the Equality Act with regard to the Public Sector Equality Duty and has concluded that the application does not cause discrimination on the grounds of gender, race and disability.

### **13. Conclusions and Reasons for Decision**

Officers have taken account of the NPPF and S38(6) of the Planning and Compulsory Purchase Act 2004 and concluded that the proposed Variation of Condition 1 (Approved Plans) accords with policy and national guidance in terms of design and neighbourhood amenity. The proposal is four square metres bigger than what was originally approved and on balance the small increase in size does not cause harm to the amenity of the area and is therefore recommended for approval.

### **14. Recommendation**

In respect of the application dated 19.09.2019 it is recommended to Grant Conditionally.



## **15. Conditions / Reasons**

The development hereby permitted shall be carried out in accordance with the following approved plans:

### **1 CONDITION: APPROVED PLANS**

Site and Location Plan Site location plan 0112 001 received 18/09/19

Remedial Works - Proposed Plans and Elevations 0112 030 Rev J received 24/01/20

Remedial Works - Existing and Proposed Roof Plans 0112 032 Rev D received 24/01/20

Reason:

For the avoidance of doubt and in the interests of good planning, in accordance with the Plymouth & South West Devon Joint Local Plan 2014–2034 (2019).

### **2 CONDITION: IMPLEMENTATION AND COMPLETION OF DEVELOPMENT**

Within six months of the date of this planning permission, the applicant shall submit evidence to the Local Planning Authority for written approval that this permission has been implemented and completed in accordance with the approved drawings

Reason:

To protect the amenity of the area and ensure that the details of the development are in keeping with the standards of the vicinity in accordance with Policy DEVI (Protecting Health and Amenity) of the Plymouth and West Devon Joint Local Plan (2014-2034) and the National Planning Policy Framework 2019.

### **3 CONDITION: RESIDENTIAL ANNEXE**

The rear annexe hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 14 West Hill Road.

Reason:

Due to the close relationship between the proposed annexe and the existing dwelling and shared access and amenity areas, the accommodation is considered unsuitable for independent occupation. In accordance with Policy DEV10 of Plymouth and South West Devon Joint Local Plan 2014 - 2034 (2019) and the National Planning Policy Framework (2019).

### **4 CONDITION: RESTRICTIONS ON PERMITTED DEVELOPMENT**

Notwithstanding the provisions of Article 3 and Classes A, B, C and E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements, improvements, erections or other alterations, including to the roof, shall be constructed to the dwelling hereinafter 14 West Hill Road.

Reason:

In order to protect the amenity of the area and prevent overdevelopment of the site in accordance with policies DEVI, DEV10 and DEV20 of the Plymouth and South West Devon Joint Local Plan and paragraph 127 of the National Planning Policy Framework 2019.

### **5 CONDITION: TEMPORARY USE FENCE WITHIN COURTYARD**

Prior to first use of the annex, all fencing and safety barriers dividing the rear courtyard shall be removed. Notwithstanding the provisions of the permitted development order, no further structures, demarcations or fences shall be erected within the courtyard of the dwelling house.

Reason:

Due to the close relationship between the proposed annexe and the existing dwelling and shared access and amenity areas, the accommodation is considered unsuitable for independent occupation in accordance with Policy DEV10 of Plymouth and South West Devon Joint Local Plan 2014 - 2034 (2019) and the National Planning Policy Framework (2019).

**6 CONDITION: RESTRICTIONS ON PERMITTED DEVELOPMENT**

Notwithstanding the provisions of Class A of Part 2 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure or opening, shall be constructed to the dwelling hereinafter 14 West Hill Road.

Reason:

In order to protect the amenity of the area and prevent overdevelopment of the site in accordance with policies DEVI, DEV10 and DEV20 of the Plymouth and South West Devon Joint Local Plan and paragraph 127 of the National Planning Policy Framework 2019.

**7 CONDITION: WINDOW OPENINGS**

Prior to first use of the annexe hereby permitted any window opening on the northeast elevation shall be fitted with casement restrictor stays that limit opening to 100mm. The restrictors shall be retained in perpetuity.

Reason:

To protect the health and safety of residents in the area in accordance with Policy DEVI (Protecting Health and Amenity) of the Plymouth and West Devon Joint Local Plan (2014-2034) and the National Planning Policy Framework 2019.

**INFORMATIVES**

**1 INFORMATIVE: (NOT CIL LIABLE) DEVELOPMENT IS NOT LIABLE FOR A COMMUNITY INFRASTRUCTURE LEVY CONTRIBUTION**

The Local Planning Authority has assessed that this development, due to its size or nature, is exempt from any liability under the Community Infrastructure Levy Regulations 2010 (as amended).

**2 INFORMATIVE: CONDITIONAL APPROVAL (NEGOTIATION)**

In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) Order 2010 and the National Planning Policy Framework 2019, the Council has worked in a positive and pro-active way with the Applicant and has negotiated amendments to the application to enable the grant of planning permission.

**3 INFORMATIVE: PROPERTY RIGHTS**

Applicants are advised that this grant of planning permission does not over-ride private property rights or their obligations under the Party Wall etc. Act 1996.

**4 INFORMATIVE: STRUCTURES OVERHANGING THE HIGHWAY**

Applicants are advised that this grant of planning permission does not over-ride their obligations under section 153 of the Highway Act 1980 Act.